IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.730 OF 2005
IN
APPEAL NO.655 OF 2004
IN
INSOLVENCY PETITION NO.40 OF 2004

Hemant D. Shah ....Appellant
V/s.
Ashok Thapar & Ors. ....Respondents

Mr.Iqbal Chagla, Senior Advocate with Mr.Riyaz Chagla with Ms.Sushama Joshi & Ms.Swati Desai i/b M/s.Hareshd Mehta & Co. for the Appellant.

Mr.Bagla i/b M/s.Bagla Dandekar & Co. for the Respondents.

Mr.A.P.Kothari, Deputy Official Assignee present.

CORAM : DR.S. RADHAKRISHNAN &
S.J. VAZIFDAR, JJ.
DATED : 27TH APRIL, 2006.

P.C. :

1. Heard the learned Senior Counsel for the Appellant and the learned advocate for the Respondents.

2. The main grievance of the learned Senior Counsel for the Appellant herein is that by an order passed by the Division Bench of this Court while admitting Appeal No.311 of 2005 on 11.4.2005 wherein in paragraph 3, the Division Bench has specifically directed "Appeal to be placed for hearing along with

Appeal No.655 of 2004 in the last week of April, 2005."

3. In appears that inspite of the same, the Respondents herein had entered into the consent terms with the Appellant only in Appeal No.311 of 2005 on 17.10.2005 and obtained the order from this Court on that day. It appears that in the said Appeal No.311 of 2005 M/s.Saral Enterprises was the Appellant wherein the present Appellant namely Hemant D. Shah was and is a partner. It is also pertinent to note here that in the suit claim against the original Defendant No.3 who is the present Appellant is based on the fact that the original Defendant No.3 was sued as a partner the said firm. When the above order dated 17.10.2005 was obtained, no notice was given to the Appellant herein and the order was obtained behind his back.

4. The learned advocate for the Respondents is unable to point out any genuine or a bona-fide reason as to why the consent terms were filed and an order was obtained from this Court behind the back of the present Appellant.

5. Another grievance of the learned Senior Counsel for the Appellant is that the above consent terms ought not to have been filed and the order ought not to have

been obtained on 17.10.2005 especially when this Court by an order dated 11.4.2005 had directed the present Appeal No.655 of 2004 ought to have been heard along with Appeal No.311 of 2005. Under the aforesaid facts and circumstances of this case, we are inclined to make the Notice of Motion absolute in terms of prayer clause (a).

(DR.S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)